



**US Army Corps
of Engineers®**

SPECIAL PUBLIC NOTICE

PROPOSAL TO ACCEPT FUNDS FROM
THE PORT OF SAN DIEGO

LOS ANGELES DISTRICT

Comment Period: January 15th, 2008 through February 15th, 2008

Project Manager: Mark D. Cohen (213) 452-3413; Email – mark.d.cohen@usace.army.mil

On December 11, 2000, the Water Resources Development Act of 2000 (WRDA 2000, Public Law No. 106-541) was signed into law by the President of the United States.

Section 214 of WRDA 2000 reads as follows:

(a) IN GENERAL - In Fiscal Years 2001 through 2003, the Secretary (of the Army), after public notice, may accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army.”

(b) EFFECT ON PERMITTING - In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decision making with respect to permits, either substantively or procedurally.”

The Secretary of the Army has delegated this responsibility to the Chief of Engineers and his authorized representatives, including the Commander of the Los Angeles District, U.S. Army Corps of Engineers (Los Angeles District). **This Public Notice announces the preliminary intent of the Los Angeles District to accept and expend funds contributed by the Port of San Diego to expedite processing of their Department of the Army (DA) permit applications, subject to a series of limitations.** This Public Notice also solicits comments from the general public on the subject of acceptance and expenditure of funds contributed by these non-Federal public entities to expedite the evaluation of DA permit applications.

Comments should be mailed to:

U.S. Army Corps of Engineers, Los Angeles District
Regulatory Division
ATTN: Mark D. Cohen
P.O. Box 532711
Los Angeles, CA 90053-2325

Alternatively, comments can be sent electronically to: Mark.D.Cohen@usace.army.mil

We also want to discuss the following subjects with this Public Notice:

- Definition of non-Federal public entities;
- How the Los Angeles District would expend the funds;
- The kind of activities for which funds would be expended;
- The procedures we will use to ensure that the funds will not impact impartial decision making;
- The benefits non-Federal public entities would receive from their funds;
- Impacts we foresee to our regulatory program and to DA permit evaluations that are not subsidized by funds contributed by non-Federal public entities.

Non-Federal public entities are comprised of various forms of state and local governmental agencies and Indian tribal governments. They include, but are not limited to, local transportation agencies desiring to expedite highway projects, port authorities wanting permits expedited for marine terminals, flood and storm water management agencies, diking districts, or governmental economic development agencies seeking to expedite permit applications for certain kinds of work, including industrial or commercial development. Two or more non-Federal public entities could jointly fund a single account. Over the past two years, the Los Angeles District has had funding discussions with San Bernardino County, Pima County (Arizona), the California Department of Transportation, the Port of Los Angeles, the County of Los Angeles, the Port of Long Beach, San Diego County, the San Diego Water Authority, Riverside County, and the City of San Diego. We expect participating entities would be public agencies with a number of permit applications being simultaneously considered by the Los Angeles District, and enough future projects in the planning stage to warrant this form of partnership.

The Corps of Engineers' regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Additional funds received from non-Federal public entities would be used to augment the Los Angeles District regulatory budget in accordance with the provisions of WRDA 2000. The Los Angeles District would establish separate accounts for each funding non-Federal public entity to track receipt and expenditure of the funds. Los Angeles District regulatory employees would charge their time against the respective account of a non-Federal public entity when they did work to expedite resolution of one of that entity's permit requests. With an increased regulatory budget, the Los Angeles District would hire additional employees, paying salaries in part from the non-Federal public entity funding to the degree the employees work on expediting those entities' permit applications.

Funds would mainly be expended on the salaries and overhead of Regulatory Project Managers performing permit processing activities for participating public entities. Such activities would include, but not be limited to, the following: application review, drawings correction, jurisdictional determinations, site visits, public notice preparation, preparation of correspondence, conduct of the public interest review, preparation of draft permit decision documents, and meetings with the applicant and other agencies. Funds would not be expended for review of project managers' work by supervisors, other elements of the Los Angeles District, or other persons in the decision-making chain of command. No enforcement or compliance activities would be paid from the augmenting funds, nor would the funds be used for paying the costs of public hearings and distribution of public notices.

Funds may also be expended by other Corps elements (e.g. Environmental Resources Branch, or Engineering Division) or to hire contractors to perform select duties such as site visits, technical writing, copying, technical contracting for review of specific items such as biological assessments for endangered species, preparing regional general permits, Essential Fish Habitat determinations, and other technical documents, including draft environmental documents.

If a participating entity's funds are expended and are not renewed, their remaining permit applications would be handled like those of any other non-participant, in a manner decided by the assigned regulatory project manager and his or her supervisor.

To ensure that the funds will not impact impartial decision-making, the following procedures, mandated from Headquarters, U.S. Army Corps of Engineers, would apply to all cases using additional funds provided by the participating non-Federal public entities:

- a. All final permit decisions for cases where these funds are used must be reviewed at least by one level above the decision maker, unless the decision maker is the District Commander. For example, if the decision maker were the Chief, Regulatory Division, then the reviewer would be the District Commander.
- b. All final permit decisions for cases where these funds are used will be made available on the Los Angeles District Regulatory web page.
- c. The Los Angeles District will not eliminate any procedures or decisions that would otherwise be required for that type of project and permit application under consideration.
- d. The Los Angeles District must comply with all applicable laws and regulations.
- e. Funds will only be expended to expedite the final decision on the permit application. Funds will not be expended for the review of the decision maker's decision. If contracts are used to develop decision documents, such decision documents must be drafts only and be reviewed and adopted by the Corps regulatory program employees, before the decision is made.

In general, the workload of the Los Angeles District Regulatory Division has increased significantly due to a variety of reasons, including: Endangered Species Act (ESA) compliance, compliance with Section 106 of the National Historic Preservation Act, jurisdictional issues related to the recent Rapanos guidance, and more. The resulting backlog of applications has increased as well as the average permit application processing time. For the Port of San Diego, its multiple projects, combined with increased concern over water quality parameters, endangered species, mitigation, Essential Fish Habitat, and more have also increased the workload of the Los Angeles District Regulatory Division. As well, the Port may benefit from additional programmatic initiatives, like the development of Regional General Permits for qualifying activities.

Section 214 of WRDA 2000 is designed to enable the Los Angeles District regulatory program to expedite the processing of public projects. Participating agencies can expect some of their permit applications to receive expedited handling, and to the degree we consider it appropriate, they can set priorities. Their augmentation of our regulatory budget would allow us to hire additional people, increasing the size of the pool from which we would assign people to expedite these applications. The result for participants should be streamlined permit processing, new tools to resolve ESA issues, and a more predictable time-line for obtaining permit authorizations.

We do not expect this method of expediting the permit review of certain public projects to negatively impact the Los Angeles District's regulatory program, or to increase the waiting time for permit evaluations that are not subsidized by funds contributed by non-Federal public agencies. Reference documents and programmatic tools developed by public entity funding will also be available to the general public. We expect the benefits of implementing this program to translate into an enhanced evaluation capability for all participants.

This public notice has a 30-day comment period. Following the review of comments received, the Los Angeles District Commander will determine if acceptance and expenditure of the funds is in compliance with Section 214 of WRDA 2000. If the District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is in compliance with the Act and is not otherwise contrary to the general public interest, the Los Angeles District will proceed to accept and expend such funds from The Port of San Diego. Funds will be accepted only if the public interest is better served through cost-effectiveness, enhanced evaluation

capability, streamlined permit processing, or other appropriate justification. A final public notice will be issued regarding the District Commander's decision. Beyond that, no new public notice will be issued if a participating non-Federal public entity increases the amount of funds previously furnished, provided that the purpose remains the same.

Currently, the authority to accept and expend funds from non-Federal public entities is scheduled to expire on December 31, 2008.

Comments on implementing Section 214 of WRDA 2000 will be accepted and made part of the record, and they will be considered in determining whether it would be in the best public interest to proceed with this administrative practice. Comments should reach this office, Attn: Regulatory Division, not later than the expiration date of this public notice (see the address on page one of this public notice).

For additional information please call Mark D. Cohen of my staff (213) 452-3413. This public notice is issued by the Chief, Regulatory Division.